IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

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JUDGMENT

Laxman
vs.
Amaru @ Amar Chand.

S.B.CIVIL SECOND APPEAL NO.299/2003 UNDER SECTION 100 CPC AGAINST THE JUDGMENT AND DECREE DATED 11.12.2000 PASSED BY SHRI H.L. CHANDA, ADDITIONAL DISTRICT JUDGE NO.1, BIKANER IN CIVIL APPEAL NO.36/1997.

DATE OF JUDGMENT ::: 10.4.2006

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. SD Vyas, for the appellant.

Mr. BK Vyas a/w Mr. Ajay Vyas) for the respondents.
Mr. N Mulchandani)

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BY THE COURT:

Heard learned counsel for the parties.

The plaintiff/appellant filed a suit for permanent injunction seeking mandatory injunction against the defendants on the ground that in the south side of the plaintiff's house, there are plaintiff's doors, windows and

ventilators and they are opening since last more than 40 years. The defendants/respondents raised construction on 2.3.1985 and closed the plaintiff's doors, windows and ventilators. By this, the defendants have infringed the plaintiff's right of air and light and, therefore, the plaintiff is entitled to decree for mandatory injunction as the plaintiff has acquired easementary right.

The defendants submitted written statement and contested the suit.

The issues were framed and the two courts below after considering the oral evidence produced by the plaintiff held that the plaintiff's three witnesses gave three different versions and the plaintiff failed to prove that there is any lane in existence towards the south of the plaintiff's house.

The appellant/plaintiff produced one patta, copy of which is placed on record in this second appeal as Annex.1. According to learned counsel for the appellant, it is clear from the plaintiff's patta (Annex.1) that in the south of the plaintiff's house, there is a blind lane and according to learned counsel for the appellant, this is a public lane and its existence is given in the public document i.e. Patta. The first appellate court committed serious error in not relying upon this document.

I have considered the submissions of learned counsel for the appellant and perused the facts of the case and record and the reasons given by the two courts below in

their respective judgments and decrees dated 3.12.1992 and 11.12.2000.

It is clear from the facts of the case that the issue before the courts below was based on question of fact and the two courts below after appreciation of evidence found that the plaintiff himself was not clear about his doors, windows, etc. The witnesses produced by the plaintiff also have not supported the plaintiff fully and ave contradictory statements. So far as patta is concerned, the facts mentioned in the plaintiff's patta is not binding on the defendants, therefore, if the said document was not relied upon by the first appellate court, the first appellate court has not committed any error of law.

In view of the above, I do not find that any substantial question of law arises in this appeal, therefore, this appeal deserves to be dismissed, hence, dismissed.

(PRAKASH TATIA), J.

S.Phophaliya